

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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FIRST, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIMOTHY MCARTHUR,

Defendant.

X

Civil Action No.  
: U.S. DISTRICT COURT  
: DISTRICT OF MASS.

05 10544 JLT

X

[PROPOSED] ORDER ON EX PARTE APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, EXPEDITED DISCOVERY AND FOR  
HEARING DATE ON PRELIMINARY INJUNCTION MOTION

Upon the Verified Complaint, the Memorandum in Support of Ex Parte Application for Temporary Restraining Order and Expedited Discovery, the Affidavit of Irwin B. Schwartz and for good cause shown, it is hereby ORDERED that:

1. Plaintiff shall serve by hand no later than March \_\_\_, 2005, the Summons, Verified Complaint, the application for temporary restraining order and expedited discovery, all supporting papers, and the discovery attached hereto as Exhibit A, and that defendant shall deliver all documents responsive to the document request to the office of plaintiff's counsel no later than 48 hours after service upon him.

2. A Temporary Restraining Order immediately shall issue, and the defendant, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him, shall not publish NASCAR® Series 2003 Season source code, object code or any derivative thereof. Plaintiff may notify defendant and others potentially subject to the Temporary Restraining Order by electronic mail delivery of copies of this Order and the Temporary Restraining Order in PDF and TIFF file formats, followed by service by certified United States mail to such recipient's last known address.

3. In addition, defendant shall preserve inviolate the software and information that makes up all source or object code and documents relating to NASCAR® 2003 or any derivatives thereof, including, but not limited to a computer software application named "GTS\_Series\_v2.0.exe" ("GTS.exe"), as well as all records that reflect the identity or number of persons who downloaded "GTS.exe" from defendant's Internet Web sites; and

4. The hearing on the Motion For Preliminary Injunction herein shall be held on March \_\_\_\_, 2005 at \_\_\_\_ o'clock. Plaintiff's motion and supporting papers shall be filed under ECF by no later than March \_\_\_\_, 2005, the opposition shall be filed by no later than March \_\_\_\_, 2005, and the reply shall be filed by no later than March \_\_\_\_, 2005.

Dated: March \_\_\_\_, 2005

SO ORDERED,

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, J.

EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FIRST, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIMOTHY MCARTHUR,

Defendant.

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X

Civil Action No.

FIRST REQUEST FOR  
PRODUCTION OF  
DOCUMENTS TO  
DEFENDANT  
TIMOTHY MCARTHUR

Pursuant to Fed. R. Civ. P. 34, FIRST hereby requests that McArthur produce for inspection and copying within 48 hours after service hereof at Petrie Schwartz LLP, 500 Boylston Street, Suite 1860, Boston, Massachusetts 02116 all Documents<sup>1</sup> in your possession, custody or control, referring or relating to:

DOCUMENTS REQUESTEDRequest No. 1

NASCAR® 2003

DEFINITIONS AND INSTRUCTIONS

1. The meaning of all non-defined terms shall be in accordance with their ordinary and accepted usage. The plaintiff incorporates by reference the Uniform Definitions In Discovery Requests contained in Local Rule 26.5.

2. In addition, "document" means all electronic data files, including word processing documents, spreadsheets, database files, charts, drafts, outlines, e-mail, PIF files, batch files, source code, object code, executable files and deleted files.

"Document" also means all other electronic data stored on computer memories, hard

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1 See Definitions and Instructions below.

disks, floppy disks, cd-rom, or any other method.

3. "FIRST" or "plaintiff" means the plaintiff in this action, FIRST, LLC.

4. "McArthur", "you" and/or "your" means defendant in this action Timothy McArthur and his agents, representatives, employees or assigns.

5. "NASCAR® 2003" means the source code and object code for the NASCAR® Series 2003 Season computer software game and any derivatives works thereof.

6. If an objection is made to any request contained herein, for each item or category objected to:

(a) State the specific ground for each objection;

(b) Identify each such document by giving its date, the name of each author (and each addresser, if different), the name of each addressee (and each recipient, if different) and by giving any other information necessary to identify such document or part thereof; and

(c) Provide a description of the subject matter of each document or item.

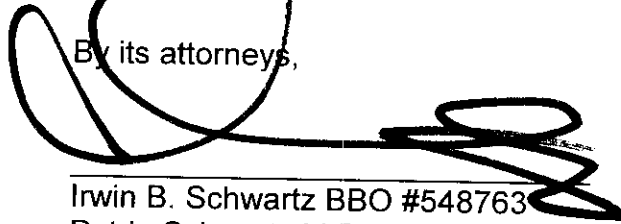
7. This request for production of documents is continuing, and to the extent that the responses may be supplemented by documents subsequently acquired by McArthur or his counsel, McArthur is requested to serve supplemental responses pertaining to and produce such documents.

DATED: March 22, 2005

Respectfully submitted,

First, LLC,

By its attorneys,

A large, stylized handwritten signature in black ink, appearing to read 'Irwin B. Schwartz', is written over the text 'By its attorneys,' and extends to the right across the contact information.

Irwin B. Schwartz BBO #548763

Petrie Schwartz LLP

500 Boylston Street, Suite 1860

Boston, Massachusetts 02116

(617) 421-1800

(617) 421-1810 (fax)